

BOARD OF APPEALS CASE NO. 4932

BEFORE THE

APPLICANT: 1901 Emmorton Road LLC

ZONING HEARING EXAMINER

**REQUEST: Special Exception to construct
an Assisted Living Facility in the R2 District;
1901 Old Emmorton Road, Bel Air**

OF HARFORD COUNTY

Hearing Advertised

Aegis: 6/23/99 & 6/30/99

Record: 6/25/99 & 7/2/99

HEARING DATE: August 4, 1999

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ZONING HEARING EXAMINER'S DECISION

The Applicant is 1901 Emmorton Road LLC. The Applicant is requesting a Special Exception to permit an assisted living facility in an R2, Urban Residential District.

The subject parcel is owned by Forest Glen Limited Partnership and is located at 1901 Old Emmorton Road in the First Election District. The parcel is identified as Parcel No. 578, in Grid 1-D, on Tax Map 56. The parcel contains 9.75 acres, more or less, all of which is zoned R2.

Mr. Dudley Campbell appeared and qualified as an expert in the field of site planning and land development. Mr. Campbell identified Petitioner's Exhibit No. 4 and said the subject parcel is surrounded by a service station, a bank, a McDonald's Restaurant, a mini warehouse, a car wash, a real estate office, and other commercial uses. Additionally, he said that the property adjoins property owned by Harford County Board of Education and a large parcel of property zoned B3 which is tentatively planned as a shopping center. Mr. Campbell identified Exhibit No. 5 which he said was a site plan prepared under his direction. He said the property has frontage on MD Route 924 and is generally level. He said the proposed building can meet all setback requirements and comply with all parking requirements. He went on to testify that the subject parcel has public water and sewer available and that all natural features will be dealt with in accordance with County, State and Federal regulations.

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Mr. Campbell said that the maximum building coverage allowed by the Code is 40% and that the proposal, as submitted, is for approximately 10% coverage. Mr. Campbell reviewed each of the setback requirements and indicated that the application could comply or exceed all setback requirements and that the density will not exceed 20 beds per acre. Mr. Campbell then testified that he agreed with the conclusion in the Staff Report that the plan, as submitted, is consistent with the 1996 Master Plan and the 1996 Land Use Plan.

Mr. Campbell testified the Applicant could comply with all of the requirements set forth in Section 267-9(l) of the Code. He specifically addressed traffic and indicated that two intersections will be affected by the project. He went on to explain that MD Route 924 and Plumtree Road and a second intersection at MD Route 924 and Patterson Mill Road could be impacted. He said that a traffic light was planned for the intersection of MD Route 924 and Plumtree Road and indicated that a study has been done by the Maryland Department of Transportation in connection with a plan to locate a park and ride facility at that intersection. He said the minimal traffic generated by an assisted living facility would not have an adverse impact on that intersection, especially in light of the traffic generated by the proposed park and ride facility. Mr. Campbell testified that the Applicant was willing to submit landscape and lighting plans and, otherwise comply with all conditions recommended by the Department of Planning & Zoning.

Mr. Louis Grimmel appeared and testified that is a Chief Executive Officer of Lorian Health Systems. Mr. Grimmel said that his company has been providing assisted living, nursing home and other assistance and medical care to senior citizens for 21 years. Mr. Grimmel said that an assisted living facility is a facility which provides assistance to senior with activities of daily living, including bathing, dressing, medication supervision and other activities normally undertaken in the course of a day.

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Mr. Grimmel said that the proposed facility will contain a comprehensive care component which will provide more sophisticated medical services to those who may be in need. He went on to explain that the facility will be able to provide remote screening capabilities wherein tests can be conducted at the facility and the test can be observed in real time by physicians at hospitals and other remote locations and assessments made via technology.

Mr. Grimmel indicated that employee traffic is scheduled at off-peak hours, car pooling is encouraged, and he has experienced no traffic difficulties with any other facilities. Mr. Grimmel went on to testify that he is willing to conduct a traffic impact analysis and to provide whatever traffic improvement may be required as a result of the traffic impact analysis and Adequate Public Facility legislation. Mr. Grimmel said there are no activities within the building which can be observed or heard outside the confines of the building and the only activities which occur outside is walking and limited exercise. He said there are no odors, dust, gas, smoke, fumes, vibrations, glare or noise as a result of the facility.

Mr. Anthony McClune, Manager, Division of Land Use Management, appeared as a witness on behalf of the Department of Planning and Zoning. Mr. McClune said that the Department reviewed the application and found it to be in compliance with all provisions of the Code, as well as the Limitations, Guides and Standards of the Code. Mr. McClune indicated that the Department did not feel there would be adverse impact on adjacent properties and that the proposed use was consistent with the Master Plan and the Harford County Zoning Code. Mr. McClune went on to testify that the proposed use will have no greater impact at this location than at any other location in the R2 District.

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CONCLUSION:

The Applicant is requesting a Special Exception to Section 267-53(F)(9) of the Harford County Code, to permit an assisted living facility in an R2, Urban Residential District.

Section 267-53(F)(9) provides:

“Nursing homes and assisted living facilities. These uses may be granted in the AG, RR, R, R1, R2, VR and B1 District, provided that:

- (a) A minimum parcel area of five (5) acres is established and a maximum building coverage of 40% of the parcel is provided.
- (b) The setbacks of the district for institutional uses shall be met.
- (c) The density shall not exceed 20 beds per acre of the parcel.”

The evidence indicates that the subject parcel contains 9.75 acres, m/l, is zoned R2, that the building coverage will not exceed 40%, that the Applicant will comply with all institutional setbacks and the density will not exceed 20 beds per acre of the parcel. The evidence also indicates that the Applicant can meet the “Limitations, Guides and Standards” set forth in Section 267-9(I).

A Special Exception is a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in the district. Creswell v. Baltimore Aviation Service, Inc., 250 Md. 712 (1970). The most recent comprehensive and definitive statement of the law of special exceptions is found in the case of Mossberg v. Montgomery Co., 107 Md. App. 1 (1995), hereinafter referred to as “Mossberg”. Mossberg chronicles the history and development of special exception case law in Maryland and sets forth a definitive statement of the current law regulating a special exception.

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The Court of Special Appeals in Mossberg said:

“ Thus, it is not whether a special exception/conditional use is compatible with permitted uses that is relevant in this administrative proceeding. The legislative body, by designating the special exception, has deemed it to be generally compatible with other uses. In special exception cases, therefore, generally compatibility is not normally a proper issue for the agency to consider. That issue has already been addressed and legislatively resolved. Moreover, it is not whether a permitted use by way of special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effect in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is considered by the agency.”

Once the Applicant meets the burden of demonstrating compliance with the Code requirements set forth in Section 267-53(F)(9), the burden shifts upon others to produce competent evidence that there is a “greater impact at the present location than other locations similarly zoned.” In the instant case, there is no evidence whatsoever that the requirements of Section 267-53(F)(9) cannot be met. There is no evidence of a greater impact of this use at this location than elsewhere in the zone, nor is there any evidence that approval of the request will impact the “Limitations, Guides and Standards” set forth in Section 267-9(I).


Therefore, it is the recommendation of the Hearing Examiner that the requested Special Exception be approved, subject to the following conditions:

1. That the Applicant shall submit a detailed site plan to be reviewed by the Development Advisory Committee. The plans submitted to the Department of Planning and Zoning shall be in general compliance with the plan submitted to the Board. However, changes to the building configuration and parking layout may be approved by the Department of Planning and Zoning. Landscaping and lighting plans shall also be submitted for review and approval by the Department of Planning and Zoning.
2. That the Applicant shall submit an architectural rendering of the proposed building to the Department of Planning and Zoning for review and approval.

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3. That The development shall meet the growth management provision of the County Code.
4. That the Applicant shall obtain all necessary permits and approvals for the development and construction of the facility.
5. That the site plan introduced into evidence as "Petitioner's Exhibit No. 5", indicates an "area for future development" between the proposed building and MD Route 924. The Harford County Zoning Code does not presently allow any future development of the site beyond that for which Special Exception approval is currently sought and the designation of the future development area is not intended to suggest that any future development is currently possible. However, should future changes to the Code allow further development of the site, nothing contained in this application or approval is intended to limit further development as may be allowed in accordance with any future legislation.

Date SEPTEMBER 7, 1999



L. A. Hinderhofer
Zoning Hearing Examiner